IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-01-2007

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THE HONOURABLE MR.JUSTICE R.REGUPATHI

Crl. Appeal No.1128 of 2000

1.Rajulu
2.Kannan
3.Sivakumar .. Appellants.

Versus

The State of Tamilnadu
Rep. By the Deputy Superintendent of Police,
Kottakuppam. .. Respondent.

For Appellants : Mr.M.Devaraj

For Respondent : Mr.N.Kumanan
Government Advocate (Crl.side)

PRAYER: Appeal against the judgment passed by the learned Special Judge (Principal Sessions Judge) Villupuram on 13.11.2000 in S.C.No.171 of 2000.

J U D G M E N T

A-1 to A-3 are the appellants before this Hon'ble Court. The trial Court convicted the appellants for an offence punishable under Section 3(1)(x) r/w 8(a) of Schedule Caste and and Schedule Tribe (Prevention of Attrocities) Act 1989 (in short `the SC and ST Act) and under Section 323 IPC and sentenced them to undergo imprisonment for six months each and to pay a fine of Rs.500/- each respectively. Aggrieved against the conviction and sentence, the present appeal has been preferred before this Hon'ble Court.

2. The case of the prosecution is that P.W.1 belongs to SC and ST community. On 02.12.1999 at about 7.00 p.m, when P.W.1 was passing through Melatheru Kadapari village, the appellants alleged to have abused him, calling his caste name and further A-1 with hand alleged to have caused injury on the forehead, A-2 with stick on the back of the chest and A-3 with the stick on the right fore arm. This incident was witnessed by P.W.3. However, he has been treated hostile. P.W.1 informed this incident to P.W.5. P.W.5 took P.W.1 to Pondicherry JIPMER Hospital at about 11.00 p.m.

3. P.W.2, the medical officer attached to JIPMER Hospital, Pondicherry examined P.W.1 at 11.45 p.m and found two injuries, namely tenderness and ill-defined swelling 4 x 3 cm left zygoma and tenderness in right elbow in lateral aspect swelling ill-defined 3 x 3 cm abrasion present over swelling. The examination report is Ex.P-2.

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Before even admitting P.W.1, P.W.1 left from the hospital.

4. P.W.9 the Inspector of Police on 03.12.1999 at about 1.00 pm received the complaint from P.W.1 and registered a case in Crime No.413 of 1999 for an offence punishable under Sections 341 and 323 IPC r/w Section 3(1)(x) of SC and ST Act. Ex.P-1 is the complaint and Ex.P-6 is the First Information Report. He has sent the copy of the FIR to the learned Magistrate through P.W.7. M.O.1 is the shirt of P.W.1 recovered under Ex.P-3. On the same day he has communicated the FIR to the Deputy Superintendent of Police and after 4.00 p.m he has assisted the Deputy Superintendent of Police, P.W.10.

5. P.W.10 prepared the Observation Mahazar-Ex.P-4 in the presence of P.W.6 and examined P.W.1 to P.W.5. He then prepared the rough sketch-Ex.P-6. On 04.12.1999 he has examined P.W.7 and P.W.9. P.W.8 is the RDO who has issued the community certificate Ex.P-5 to substantiate that P.W.1 beongs to SC and ST community. P.W.11 is the Deputy Superintendent of Police, who after verifying the investigation conducted by P.W.10 and after examination of the witnesses, filed the final report on 13.04.2000.

6. The learned trial Judge questioned the accused under Section 313 Cr.P.C for which the accused claimed innocence. After hearing the arguments of both the parties and perusing the evidence and materials available on record convicted the appellants as aforementioned.

7. The learned counsel appearing for the appellants submit that though P.W.1 has claimed that all the appellants have abused him by calling him his caste name, in the evidence, he has stated that the first accused alone made such abuses. However, at the time when he has met P.W.5 before going to the hospital he has simply informed that he was assaulted by the appellants. In such circumstances, the learned counsel for the appellants submit that the allegation in so far as the abusing of P.W.1, by calling his caste name is not consistent and is not substantiated.

8. So far as the overt act of the second appellant is concerned, the allegation is that he was armed with the stick and beat P.W.1 on the back of the chest. But there is no corresponding injury spoken to by P.W.2, the Doctor. Though there are two injuries on P.W.1, in view of the reason that P.W.1 has claimed that all the three persons have assaulted, the learned counsel for the appellants submit that the evidence of P.W.1 is contradictory and therefore, submitted that the case of the prosecution is not substantiated.

9. Per contra the learned Government Advocate submits that though P.W.1 is a single witness, to substantiate the case of the prosecution his evidence is corroborated by P.W.2, the medical officer. In such circumstances, the conviction can be sustained, in so far as the injuries caused by A-1 and A-3.

10. I have perused the materials available onr ecord.

11. In so far as the allegation of calling P.W.1 by caste name,

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their evidence is not consistent. Though P.W.1 alleged to have reported about the occurrence immediately to P.W.5, no allegation about this has been mentioned to him. It has been simply stated that he was assaulted by the appellants. The only independent witness P.W.3, who is the owner of the tea stall, in front of which the occurrence had taken place, did not support the case of the prosecution and he has been treated hostile. In such circumstances, I find that the offence under Section 3(1)(x) r/w 8(A) of the SC and ST Act is not made out and therefore, the appellants are acquitted of this charge.

12. In so far as the second charge for an offence under Section 323 IPC is concerned, there is no corresponding injury for the second appellant and hence, he is acquitted of the said charge. However, A-1 and A-3 alleged to have caused injuries with hand and stick on the fore head and fore arm respectively and the same has been corroborated through the evidence of P.W.2, the medical officer. In such circumstances, I find that the offence under Section 323 IPC as against A-1 and A-3 is made out.

13. In view of the facts and circumstances of the case, the imprisonment of six months for these accused is too heavy. Already a fine of Rs.500/- has been imposed. In view of the fact that the occurrence had taken place during 1999 and the nature of the injuries sustained, instead of sentencing them to undergo imprisonment for six months, I find that it would be suffice to direct the appellants No.1 and 3 to pay a fine of Rs.2,500/- each in addition to the fine already imposed. The total amount of Rs.6,000/- is directed to be paid as compensation to P.W.1. Accordingly, the appeal is disposed of and the appellants 1 and 3 are directed to deposit a sum of Rs.6,000/- within a period of six weeks from today.

csh

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Special Judge (Principal Sessions Judge)
Villupuram

2.The Deputy Superintendent of Police,
Kottakuppam.

3. The Judicial Magistrate, Vanoor.

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4. - do - thro' The Chief Judicial Magistrate, Villupuram.

5. The Public Prosecutor, High Court,
   Madras.

1 CC TO MR.M. DEVARAJ, ADVOCATE SR 4742

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